

Golder v 29 W. 27th St. Assoc., LLC

2021 NY Slip Op 31641(U)

May 14, 2021

Supreme Court, New York County

Docket Number: 652371/2016

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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LOUIS GOLDER,

Plaintiff,

- v -

29 WEST 27TH STREET ASSOCIATES, LLC,TAUBER
FAMILY IRREVOCABLE TRUST DATED DECEMBER 10,
2012, AVIVA BIELORY, LARRY TAUBER

Defendant.

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INDEX NO. 652371/2016

MOTION DATE 11/07/2019,
07/01/2020,
01/25/2021

MOTION SEQ. NO. 007 009 010

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 168, 169, 170, 171

were read on this motion to/for ENFORCEMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 176, 177, 178, 179, 180, 181, 182, 184, 185, 186, 187, 188, 189

were read on this motion to/for APPOINT - REFEREE.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226

were read on this motion to/for INTERIM RELIEF.

Upon the foregoing documents and as set forth on the record (May 11, 2021), the petitioner’s (i) motion to appoint to appoint a referee and receiver (mtn. seq. no. 009), and (iii) to compel (mtn. seq. no. 010) disgorgement and compliance with the Partnership Agreement (hereinafter defined) is granted as set forth below . To the extent that it is not moot, the motion to compel discovery (mtn. seq. no. 007) is also granted as set forth below.

This is an action for dissolution of a single purpose entity, 29 West 27th Street Associates, LLC (the **LLC**), that owns and operates a mixed-use building located at 29 West 27th Street, New York, New York (the **Property**). The court (Scarpulla, J.) previously granted the petition for dissolution on June 7, 2018 (NYSCEF Doc. No. 178), which decision was unanimously affirmed by the Appellate Division, First Department (183 AD3d 428 [1st Dept 2020]). A Certificate of Dissolution was filed on July 10, 2018 (NYSCEF Doc. No. 211).

Petitioner now seeks to have a referee appointed to sell the Property at auction, and for an order directing the respondents to abide by the terms of the Partnership Agreement dated October 2, 1981 (the **Partnership Agreement**; NYSCEF Doc. No. 210) between Robert Golder, Joshua Tauber and Elizer Bielory, or, in the alternative, for a receiver to be appointed to take over the Property.

The motion to appoint a referee to sell the Property is granted. The LLC has now been dissolved and there is nothing left to do with the Property other than to sell it and split the proceeds among the former LLC members. Respondents do not appear to oppose the request (NYSCEF Doc. No. 206 at 7 [“the matter [should] proceed[] to judicial sale so that Respondents may purchase the building at auction or let a willing purchaser buy the building”]).

The motion to appoint a receiver for the Property is also granted. On the record before the court, a receiver is appropriate to take control over the subject Property to ensure that the Property is run in accordance with the terms of the Partnership Agreement pending the sale and that all proceeds are distributed accordingly.

Inasmuch as petitioner also seeks to compel disgorgement of \$9,147 in legal fees that respondents improperly paid to their counsel and to have that sum disbursed to all the (now former) members of the LLC, this relief is also granted to the extent that petitioner is entitled to a credit of \$9,147 from the proceeds of the sale of the Property. Mr. Tauber does not dispute that this \$9,147 payment came from the LLC (NYSCEF Doc. No. 206, ¶ 20) and petitioner never approve such payment. Notably, these funds appear to have been paid for legal fees at a time when nothing was happening in this litigation. In any event, it is inappropriate for the respondents to use LLC funds to pay their personal counsel's expenses.

The motion (seq. no. 007) to compel production of certain documents and disbursement is granted. Specifically, the petitioner seeks an order for respondents to:

1. Continue furnishing monthly ledgers by the 3rd of each month
2. Resume monthly distributions
3. Provide electronic access to the LLC bank account(s) for monitoring purposes, including images of any checks
4. Provide detailed invoices for all expenditures made within the last 24 months, and going forward
5. Provide access to the Property upon request
6. Provide access to the paper books and record upon request, and to
7. Comply with the terms of the Partnership Agreement.

Petitioner is entitled all of the foregoing information as a former member of the LLC during the pendency of the sale of the Property. Inasmuch as a receiver/referee is being appointed to sell the Property, the receiver/ referee is also directed to provide such information and such

disbursement to the petitioner to the extent that the information shall be available and inasmuch as funds are available for such disbursements.

Accordingly, the court having considered the arguments of the parties, and having determined that the petitioner has an interest in the property that is the subject of this action and, further, that there is a danger that the property will be materially injured or destroyed, it is

ORDERED that motions seq. nos. 007, 009, and 010 are granted as set forth above; and it is further

ORDERED that the motion for the appointment of a receiver for the real property located at 29 West 27th Street, New York, New York, which is the subject of this action, is granted; and it is further

ORDERED that Tracee Elaine Davis, Esq., fiduciary id no. 348128, with offices located at 620 8th Avenue, New York, NY 10001-2204, is hereby appointed receiver of said real property for the purpose of selling such property and managing the property until it can be sold and the proceeds disbursed in accordance with the Partnership Agreement; and it is further

ORDERED that the temporary receiver hereby appointed shall take and hold and safeguard said real property and shall collect and, if necessary, sue for, and shall hold and keep secure, all rents due from tenants leasing space in the property; and it is further

ORDERED that the receiver shall keep written accounts as provided in CPLR 6404; and it is further

ORDERED that, pursuant to Section 36.1 of Part 36 of the Rules of the Chief Judge, the receivership shall be subject to said Part 36; and it is further

ORDERED that, by accepting this appointment, the receiver certifies that she is in compliance with Part 36, including Section 36.2 (d) (“Limitations on appointments based upon compensation”), but if she is disqualified from receiving such appointment pursuant to the provisions of Part 36, she shall notify this court forthwith; and it is further

ORDERED that, by accepting this appointment, the receiver certifies that she is familiar with the duties and responsibilities of a receiver, has experience in such area, and is fully capable of assuming, and prepared to assume, those duties and responsibilities, which are commensurate with her abilities; and it is further

ORDERED that attorneys or support staff in the appointee’s office may perform tasks under the appointee’s direct supervision, but all substantive appearances and reports must be made, performed, and created by the appointee; and it is further

ORDERED that, upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the receiver shall complete, execute, and return the Form 872 to the Fiduciary Clerk; and it is further

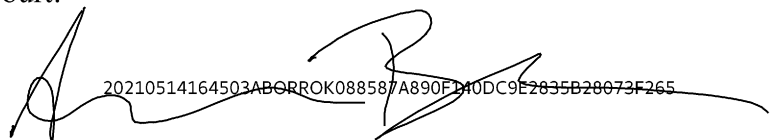
ORDERED that counsel for the movant shall, within 15 days from the date of this order, file a copy hereof with notice of entry with the Fiduciary Clerk; and it is further

ORDERED that such filing with the Fiduciary Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures For Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any closing of title shall take place at the office of the receiver/referee, or at such other location as the receiver/referee shall determine, within forty-five (45) days after such sale unless otherwise stipulated by all parties; that the referee shall transfer title only to the successful bidder at the auction; and that any delay in the closing or adjournment of the closing date beyond forty-five (45) days may be stipulated among the parties, with the referee’s consent, up to ninety (90) days from the date of sale, but any delay or adjournment beyond ninety (90) days may be set only with the approval of this court.

5/14/2021

DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE